Rohaya bte Ibrahim v Yusof bin Ibrahim

HIGH COURT (MUAR) — ORIGINATING SUMMONS NO 24(L)–1036 OF 2006
AHMADI ASNAWI JC
9 JANUARY 2008

Land Law — Restraint on dealings — Caveats — Caveator registered owner of undivided share in land — Refusal to remove caveat after sale of 1/3 undivided share by caveatee — Whether caveatee aggrieved party — Whether caveator had caveateable interest — Whether there was delay in caveator bringing an action — National Land Code ss 323, 327, Form 19B

The plaintiff was the registered owner of 1/3 undivided share in a land held under GM4517 Lot 3300, in the Mukim of Tangkak, District of Johor ('land'). The defendant and another person were the registered co-proprietors of the balance 2/3 undivided share on the said land. The plaintiff entered into a sale and purchase agreement dated 14 June 2006 with one, Zainuddin bin Ibrahim ('purchaser'), to sell to the purchaser her said 1/3 undivided share on the said land for the price of RM32,000. The purchaser fully settled and paid the sum and both the plaintiff and the purchaser executed a memorandum of transfer in Form 14A of the National Land Code ('NLC') to transfer the said land to the purchaser which was stamped on 9 August 2006. However, the transfer could not be effected because the defendant had entered a private caveat upon the said land on the grounds of his interest in the land. The defendant had also ignored the notice duly given by the plaintiff for the removal of the said caveat. Therefore the plaintiff filed this originating summons for a court order to remove the caveat. The plaintiff contended that she was an aggrieved party and that the defendant did not have a cavaetable interest in the said land and the caveat ought to be removed. The defendant, on the other hand, claimed that he had a caveatable interest in the said land and that the caveat should not be removed. A year had passed since the caveat was entered but the defendant had not filed an action in court to enforce his alleged right.

Held, allowing the plaintiff's application:

(1) It was impossible for the plaintiff to perform her part to the obligation under the sale and purchase agreement due to the presence of the defendant's caveat. The said caveat froze the register and prevented any

registered disposition of the land until the caveat was removed. In the circumstances, the plaintiff was an aggrieved person within the ambit of s 327 of the NLC and thus had the locus standi to institute the proceedings to remove the caveat. The onus have now shifted to the defendant to show that he had a caveatable interest in the plaintiff's 1/3 undivided share, to justify the entry of the caveat in the register (see para 11).

(2) It was apparent in Form 19B that the defendant's caveat was intended to forbid the registration of any dealing affecting the whole land and not confirmed to his 1/3 undivided share in the land. Thus the defendant had violated the express provision of s 323(2) of the NLC, which constituted a valid ground for the removal of the caveat (see paras 18–19).

(3) It is trite law that the purpose of filing caveat is to preserve the status quo over the said land pending resolution by the court. Therefore, it was implored upon the caveator to act fast without delay to file an action in a court of law to enforce his alleged legal right over the said land or to resolve any outstanding dispute therein. However, in this case, more than a year had passed since the caveat was entered but the defendant's action in court to enforce his alleged right over the so called excesses by the plaintiff was yet to be filed or seen. Hence, the basis to justify the existence or preservation of the said caveat was just not out there anymore. Therefore, there was no longer any valid reason for the further existence or preservation of the said caveat (see para 22).

[Bahasa Malaysia summary

Plaintif adalah pemilik berdaftar 1/3 bahagian tanah tak dibahagi yang dipegang di bawah GM4517 Lot 3300, dalam Mukim Tangkak, Daerah Johor ('tanah'). Defendan dan seorang lagi adalah tuan punya bersama berdaftar bagi baki 2/3 bahagian tanah yang tak dibahagi tersebut. Plaintif telah memasuki satu perjanjian jual beli bertarikh 14 Jun 2006 dengan seorang yang bernama, Zainuddin bin Ibrahim ('pembeli'), untuk menjual kepada pembeli 1/3 bahagiannya yang tak dibahagi ke atas tanah tersebut pada harga RM32,000. Pembeli telah menyelesaikan keseluruhan dan membayar jumlah tersebut dan kedua-dua plaintif dan pembeli telah memeterai memorandum pindah milik dalam Borang 14A Kanun Tanah Negara untuk memindahkan tanah tersebut kepada pembeli yang mana telah disetemkan pada 9 Ogos 2006. Tetapi, pindah milik tidak dapat dilaksanakan kerana defendan telah memasukkan kaveat persendirian terhadap tanah tersebut atas alasan mempunyai kepentingan terhadap tanah tersebut. Defendan juga telah mengabaikan notis yang telah diberikan oleh plaintif untuk memotong kaveat tersebut. Oleh yang demikian plaintif telah

memfailkan saman pemula ini untuk satu perintah mahkamah bagi pemotongan kaveat. Plaintif menegaskan bahawa beliau adalah pihak yang terkilan dan defendan tidak mempunyai kepentingan yang boleh dikaveatkan ke atas tanah tersebut dan kaveat perlulah dipotong. Defendan sebaliknya menyatakan bahawa beliau mempunyai kepentingan yang boleh dikaveatkan ke atas tanah tersebut dan oleh itu kaveat seharusnya tidak dipotong. Setahun telah berlalu semenjak kaveat tersebut dimasukkan tetapi defendan tidak memfailkan tindakan di mahkamah untuk menguatkuasakan haknya seperti yang didakwa.

Diputuskan, membenarkan permohonan plaintif:

(1) Adalah mustahil bagi plaintif untuk melaksanakan tanggungjawabnya di bawah perjanjian jual beli kerana terdapatnya kaveat defendan. Kaveat tersebut membekukan pendaftaran dan menghalang mana-mana pelupusan tanah tersebut sehinggalah kaveat dipotong. Dalam keadaan ini, plaintif adalah orang yang terkilan di dalam lingkungan s 327 KTN dan oleh itu mempunyai locus standi untuk memulakan prosiding ini bagi memotong kaveat. Beban pembuktian sekarang beralih kepada defendan untuk menunjukkan bahawa beliau mempunyai kepentingan yang boleh dikaveatkan di dalam 1/3 bahagian yang tak dibahagi plaintif, untuk menjustifikasikan kemasukan kaveat dalam buku daftar (lihat perenggan 11).

(2) Adalah jelas dalam Borang 19B bahawa kaveat defendan bertujuan untuk menghalang pendaftaran sebarang urusan berkaitan dengan keseluruhan bahagian tanah dan tidak terhad kepada 1/3 bahagian yang tak dibahagi dalam tanah tersebut. Oleh itu defendan telah mencabuli peruntukan jelas s 323(2) KTN, yang merupakan alasan sah untuk pemotongan kaveat tersebut (lihat perenggan 18–19).

(3) Adalah undang-undang nyata bahawa tujuan memfailkan kaveat adalah untuk mengekalkan status quo ke atas tanah sementara menunggu penyelesaian oleh mahkamah. Oleh itu pengkaveat digesa untuk bertindak pantas tanpa bertangguh untuk memfailkan tindakan di mahkamah untuk menguatkuasakan dakwaan hak undang-undangnya terhadap tanah tersebut atau untuk menyelesaikan mana-mana pertikaian yang tertunggak. Tetapi dalam kes ini, setahun lebih telah berlalu semenjak kaveat dimasukkan tetapi tindakan defendan di mahkamah untuk menguatkuasakan haknya terhadap lebihan yang dikatakan oleh plaintif belum difailkan atau ditunjukkan. Oleh itu, asas untuk menjustifikasikan kewujudan atau pemeliharaan kaveat tersebut tiada lagi. Oleh itu, tidak terdapatnya alasan yang sah untuk meneruskan kewujudan atau pemeliharaan kaveat tersebut (lihat perenggan 22).]

Notes

For cases on caveats, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3480–3824.

Cases referred to

Affin Bank Bhd v Dato' Mohamed bin Embong [2002] 1 MLJ 475 (refd)
Chiew Sze Sun v Muthiah Chettiar [1982] CLJ 39; [1982] CLJ (Rep) 423 (refd)
Eu Finance Bhd v Siland Sdn Bhd (M & J Frozen Food Sdn Bhd, intervener) [1989] 1 MLJ 195 (refd)
Kang Kok Hiang & Ors v Ong Kah Hoe [1993] MLJU 469 (refd)
Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719 (refd)
Macon Works & Trading Sdn Bhd v Phang Hon Chin & Anor [1976] 2 MLJ 177 (refd)
Malayan Banking Bhd v Chuah Chok Kiang [1997] 5 MLJ 778 (refd)
Mosbert Berhad (in liquidation) v Stella D'Cruz [1985] 2 MLJ 446 (refd)
Ng Kheng Yeow v Chiah Ah Foo & Ors [1987] 2 MLJ 330 (refd)
Registrar of Titles, Johore v Temenggong Securities Ltd [1976] 2 MLJ 44 (refd)
Soon Seng Co Sdn Bhd v Toko Palayakat Jamal (M) Sdn Bhd (formerly known as Abdul Jamal Trading Sdn Bhd) [1999] 5 MLJ 75 (refd)
Taipan Focus Sdn Bhd v Baiduri PJ Sdn Bhd [2005] 3 CLJ 73 (refd)
Tan Heng Poh v Tan Boon Thong & Ors [1992] 2 MLJ 1 (refd)
Tan Kok Chuan & Anor v Liew Nam Foong [2000] MLJU 76 (refd)
Wong Kuan Tan v Gambut Development Sdn Bhd [1984] 2 MLJ 113 (refd)
Woon Kim Poh v Sa'amah bte Hj Kasim [1987] 1 MLJ 400 (refd)
Wu Shu Chen (sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin [1997] 2 MLJ 487 (refd)

Legislation referred to

National Land Code ss 323, 323(1)(a), 323(2), 327, 327(1), 340(1), Forms 14A, 19B

Siti Hajar bte Yusop (Lee Fook Leong & Co) for the plaintiff.
Abd Rahman bin Kamaruddin (Khairuddin & Co) for the defendant.

Ahmadi Asnawi J:

[1] This is an application by the plaintiff for an order that the private caveat entered by the defendant, Yusof bin Ibrahim vide presentation No 181/2006 dated 3 July 2006 ('private caveat') on land held under GM4517 Lot 3300, in the Mukim of Tangkak, District of Johor ('land') be removed under s 327(1) of the National Land Code ('NLC') and for damages to be paid by the defendant.

[2] The plaintiff is the registered owner of 1/3 undivided share on the said land, comprising an area of approximately 3a 1r 14p. Meanwhile, the defendant and another person are the registered co-proprietors of the balance 2/3 undivided share on the said land. Pursuant to a sale and purchase agreement dated 14 June 2006 entered between the plaintiff and one, Zainuddin bin Ibrahim ('purchaser'), the plaintiff agreed to sell to the purchaser her said 1/3 undivided share on the said land for the price of RM32,000. The said sum was fully settled and paid by the purchaser. On 16 June 2006, both the plaintiff and the said purchaser executed a memorandum of transfer in Form 14A of the National Land Code to transfer the said land to the purchaser. The stamp duty was duly paid by the said purchaser on 9 August 2006. Nevertheless, the said transfer could not be effected and thereupon registered on account of the defendant's private caveat entered upon the said land. Notice was duly given by the plaintiff to the defendant for the removal of the said caveat, but it was ignored by the defendant. From exh G (encl 3, plaintiff's affidavit), the defendant accounted his action for lodging the private caveat on the grounds that:

> Saya adalah tuan punya berdaftar atas 1/3 bahagian Lot 3300 Mukim Tangkak. Tujuan saya memasukkan kaveat ini adalah untuk menjaga kepentingan tuan-tuan tanah daripada sebarang urusan jualbeli.

[3] It must be borne in mind that a caveat is not an instrument of dealing and it does not create an interest in the land. The entry of a caveat does not enhance the caveator's interest or claim to an interest in the land (*Ng Kheng Yeow v Chiah Ah Foo & Ors* [1987] 2 MLJ 330). As Abdul Malik Ishak J (as he then was) said in the case of *Tan Kok Chuan & Anor v Liew Nam Foong* [2000] MLJU 76:

> A caveat is filed for the purpose of preserving the status quo of the parties pending resolution by the court. It is to preserve the status quo of the contending parties that the process of registration is suspended until conflicting claims to the title or an interest in the land have been resolved (*Damodaran v Vasudeva* [1974] 1 MLJ 128). Under the Torrens system, no interest in land can be legally created until registration has been effected. The fact that there is a possibility that a subsequent claim to a registrable interest may be registered thereby defeating the prior claim to a registrable interest in the same land, makes it expedient that a caveat should be lodged. Once a caveat is entered it will, in law, restrain any further dealings with the land in question.

[4] Additionally, in *Macon Works & Trading Sdn Bhd v Phang Hon Chin & Anor* [1976] 2 MLJ 177, p 182, Hashim Yeop Sani J said:

> It has been well established that as far as our Land Code is concerned the whole system of caveats is founded on the principle that they exist for the protection of alleged as well as proved interest and therefore not only is a person who has a right

A to a registrable interest in land who may enter a caveat but also any person claiming title to it or any registrable interest in any alienated land or even claiming only a right to such title or registrable interest may enter a caveat — see *Mahadevan & Anor v Patel*, also *Jit Kaur v Pan Singh, Nanyang Development (1966) Sdn Bhd v How Swee Poh* and *Inter-Continental Mining Co Sdn Bhd v Societe Des Etains De Bayas Tudjuh.*

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[5] But the prohibitive effect of a caveat is quite frustrating to an aggrieved person, who wishes to deal with the impugned land, as the caveat entered acts like an injunction (Suriyadi J in *Taipan Focus Sdn Bhd v Baiduri PJ Sdn Bhd* C [2005] 3 CLJ 73). The Supreme Court in *Woon Kim Poh v Sa'amah bte Hj Kasim* [1987] 1 MLJ 400, p 402 explained the effect of a private caveat in the following words:

> The effect of a private caveat expressed to bind the land itself is to prevent any D registered disposition of the land except with the caveator's consent until the caveat is removed. See also *Eng Mee Yong & Ors v V Letchumanan*. A caveat freezes the register at least until the caveator has taken court action to determine his claim, Judith Sihombing, p 588. In the Torrens system where registration is the very basis of the system the prohibition in s 322(2) must be strictly complied with. In other words the Registrar is statutorily obliged to refuse the registration because to do so E would be a violation of an express provision of the National Land Code.

[6] However, all is not lost for any person who is aggrieved by the existence of a private caveat may at any time apply to the court under s 327 of the NLC F for an order for its removal. Section 327(1) of the NLC provides as follows:

> Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, ex parte) may make such order on the application as it may think just. G

[7] In *Wu Shu Chen (sole executrix of the estate of Goh Keng How, deceased) & Anor v Raja Zainal Abidin bin Raja Hussin* [1997] 2 MLJ 487, Mokhtar Sidin JCA, had stated (at p 499):

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> The word 'aggrieved' must be given its ordinary meaning. To be aggrieved means one is dissatisfied with or adversely affected by a wrongful act of someone. An aggrieved person is therefore a person whose legal right or interest is adversely affected by the wrongful act or conduct of another person or body. The category of aggrieved persons is never closed. I

[8] Meanwhile, Low Hop Bing J (as he then was) in *Malayan Banking Bhd v Chuah Chok Kiang* [1997] 5 MLJ 778, defined an 'aggrieved person' as stated below (at p 783):

A 'person aggrieved' under s 327(1) has been decided by our courts as someone who has suffered a legal grievance; a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something or that in law something wrongful has been done to him that affects his title to the property: see *Punca Klasik Sdn Bhd v Abdul Aziz bin Abdul Hamid & Ors* [1994] 1 MLJ 136, or any person whose legitimate rights or interests in the caveated land would be affected or who would suffer loss if the caveat in question is not removed: see *RAP Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors* [1980] 1 MLJ 248.

[9] As stated by Low Hop Bing J, an aggrieved person must be someone who has suffered a legal grievance. Needless to say, from the facts presently, it is clear that the plaintiff is the registered owner of 1/3 undivided share of the land held under GM4517 Lot 3300, in the Mukim of Tangkak, District of Johor. She must have suffered from the defendant's action. Additionally, under the provision of s 327(1) of the NLC there is no need for her to show that her registered title or interest was affected by the existence of the private caveat. The fact that she was aggrieved by the existence of the private caveat is enough. In *Chiew Sze Sun v Muthiah Chettiar* [1982] CLJ 39; [1982] CLJ (Rep) 423 Abdul Razak J said:

The section clearly shows it does not require an applicant to be a person who has a registrable interest to qualify him to apply as the respondent contends. It needs only be a person aggrieved by the existence of a private caveat.

[10] At this juncture, the plaintiff's burden is only to show to the court that she is an aggrieved person within the meaning of s 323 of the NLC. Being the registered owner of 1/3 undivided share in the said land whose title over the same is indefeasible, she is at liberty to deal with her land in the manner she thinks fit. She can sell or transfer or mortgage her share in the land to whomever she pleases and can pass a good title to any purchaser. In *Kang Kok Hiang & Ors v Ong Kah Hoe* [1993] MLJU 469, the court stated:

The defendant being the registered proprietor of an undivided half share of the land his title thereto pursuant to the provisions of s 340(1) of the National Land Code (the Code) is indefeasible.

[11] But in her case, it was impossible for her to perform her part to the obligation under the sale and purchase agreement due to the presence of the defendant's caveat. The said caveat freezes the register and prevent any registered disposition of the land until the caveat is removed. Given the scenario, there can be no doubt that she is an aggrieved person within the ambit of s 327 of the NLC. Henceforth, she has all the locus standi to institute this proceeding to have the caveat removed. The onus now shifted to the defendant to show that he had a caveatable interest in the plaintiff's 1/3

undivided share, to justify the entry of the caveat in the register. An issue that now requires the determination by the court is whether the defendant has shown that he has a caveatable interest based on the grounds given, ie to protect the interest of the landowners and whether the evidence supports the caveatable interest claimed as in Form 19B.

[12] It was contended by the plaintiff that the defendant's caveat should be removed on the grounds that the defendant does not belong to the category of persons at whose instance a private caveat may be entered pursuant to s 323 of the NLC. For a person to be entitled to enter a private caveat, he should comply with the requirements laid down in s 323 of the NLC. That section enacts as follows:

> 323 Applications for entry of private caveats
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> (1) The persons and bodies at whose instance a private caveat may be entered are:
>
> (a) any person or body claiming title to, or any registrable interest in, any alienated land or undivided share in any alienated land or any right to such title or interest;
>
> (b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and
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> (c) the guardian or next friend of any minor claiming to be entitled as mentioned in para (b).
>
> (2) Any such person or body wishing to apply for the entry of such a caveat shall do so in *Form 19B* and such application shall be attested in accordance with the provisions of s 211 and shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or an undivided share in the land or a particular interest only.
>
> (3) Any application under this section shall be accompanied by —
>
> (a) the prescribed fee;
>
> (b) the grounds giving rise to the claim thereto, verified by a statutory declaration by the applicant or his advocate and solicitor; and
>
> (c) if relating to a part of the land, a description or a plan of the land affected, and if relating to an undivided share in the land or a part thereof, a description, which is sufficient for identification

[13] The requirements under s 323 of the NLC can be summarised as follows: that a person who enters a private caveat must claim title to, or any

registrable interest in the land or any right to such title or interest. This now constitutes what is caveatable interest. Only a person who has a caveatable interest in the land may enter a private caveat. The Federal Court in *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 MLJ 113, further explained the meaning of caveatable interest in the context of s 323 as follows:

> Section 323(1) of the National Land Code sets out the classes of persons who may lodge a private caveat. They are person or body claiming title to any alienated land, or claiming any registrable interest in any alienated land; or claiming any right to such title or interest. … The words 'any rights to such title or interest' may be wide enough to allow rights arising under a contract for registrable dealing to be protected by a caveat but they are not wide enough to cover mere personal right as distinguished from right relating to land.

[14] Consequent thereto, for the caveat to remain it must passed the three stages as enunciated by the Court of Appeal in the case of *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719. Kamalanathan Ratnam J in *Soon Seng Co Sdn Bhd v Toko Palayakat Jamal (M) Sdn Bhd (formerly known as Abdul Jamal Trading Sdn Bhd)* [1999] 5 MLJ 75 further summarised those three stages as follows (at p 82):

> First, the court is to examine the caveat itself, that is, to look into *Form 19B* and the reasons stated therein for imposing the caveat. If no caveatable interest has been shown, the caveat ought to be removed without the need to consider the remaining two stages. If *Form 19B* shows a caveatable interest, the court then moves on to the second stage. The second stage is when an aggrieved party applies to remove the caveat. The court then examines the affidavit evidence of the caveator to find out if the evidence supports the caveatable interest claimed in the *Form 19B* or shows that the claim to a caveatable interest raises a serious issue to be tried. The court is to examine the evidence in detail and closely. If the evidence does not support the claim to a caveatable interest or that there is a serious issue to be tried on this point, the court is to remove the caveat without going to the third stage. Once the first two stages are satisfied, then the court must decide as a third stage, where the balance of convenience lies.

[15] Thus, the first stage is the examination of the grounds expressed in the application for the said caveat ie, Form 19B of the NLC. The defendant's sole purpose in entering the said caveat as evinced by his Form 19B (exh G of encl 3) is stated thus:

> … Tujuan saya memasukkan kaveat ini adalah untuk menjaga kepentingan tuan-tuan tanah daripada sebarang urusan jualbeli.

The relevant question here is whether the grounds stated in Form 19B therein amounts in law to a caveatable interest. The plain answer is no. It does not amount so. It is very obvious that the grounds advanced thereto has nothing

to do with claiming title to, or any registrable interest in, any alienated land or undivided share in any alienated land or any right to such title or interest. Equally it has nothing to do with claiming to be beneficially entitled under any trust affecting such land or interest. In *Luggage Distributor*'s case, Gopal Sri Ram JCA when delivering the judgment of the court laid down the following principles (at p 755):

> The parameters of caveatability under s 323(1)(a) are therefore circumscribed by these words: 'title' and 'registrable interest'. It is only one who makes a claim to either of these in land may enter a private caveat.

[16] Only a person who is claiming a title or registrable interest in any alienated land, or more specifically in this case, claiming an undivided share in the land or any right to such title or interest therein may enter a private caveat into the said land. In this case, the defendant failed to state any reason cogent enough to support his alleged caveatable interest. The only reason given and stated on Form 19B is to protect the interest of land owners from any transaction. Meanwhile in his affidavit in reply (encl 7) he attempted to strengthened his position by affirming in paras 7, 8, 9 and 10, replicated in extenso as follows:

7. Saya sebenar-benarnya menyatakan bahawa tindakan plaintif menjualkan bahagiannya dalam tanah tersebut kepada pembeli tersebut boleh mendatangkan kemudaratan yang parah terhadap hak saya di atas tanah tersebut kerana pembeli tersebut adalah seorang individu yang rakus dan suka bertindak secara tidak menasabah dan kejadian yang tidak diingini itu akan berlaku sekiranya pembeli tersebut sudah disahkan menjadi salah seorang pemilik berdaftar ke atas tanah tersebut.

8. Saya seterusnya menyatakan bahawa pembeli tersebut sudah mula menunjukkan 'belangnya' apabila dia mula bertindak cuba menafikan hak saya ke atas tanah tersebut apabila dia secara sengaja enggan membayar sewa tanah tersebut yang mana saya sepatutnya menerima bahagian saya berkaitan penggunaan tanah oleh pembeli tersebut untuk tujuan operasi kilang mee yang diusahakan oleh pembeli tersebut.

9. Saya sebenar-benarnya menyatakan bahawa plaintif telah terburu-buru menjual tanah tersebut kepada pembeli tersebut walaupun plaintif sendiri tidak ketahui kedudukan sebenar bahagiannya dalam kawasan tanah tersebut, saya sebenar-benarnya menyatakan adalah lebih wajar sekiranya urusan jual beli tanah tersebut dilakukan selepas plaintif mengetahui kedudukan sebenar bahagiannya dalam kawasan tanah tersebut.

10. Saya juga menegaskan bahawa plaintif telah pecah kontrak dengan saya apabila dia secara sengaja tidak memberitahu saya urusan jual beli

antara plaintif dengan pembeli tersebut kerana plaintif telah menyerahkan semua kuasa mentadbir bahagiannya dalam tanah tersebut itu kepada saya. Justeru itu, saya mendakwa bahawa saya mempunyai kepentingan benefisial ke atas bahagian milik plaintif yang didakwa telah dijual oleh plaintif kepada pembeli tersebut. Saya juga mendakwa bahawa saya kini mengalami kerugian berikutan dari tindakan plaintif tersebut.

[17] Again, in my view, the defendant's evidence enumerated above patently lacks the legal clout to confer upon him a solid caveatable interest that could survive the test of legal scrutiny, for the paragraphs above are mere personal observations primarily based on conjectures, suspicions and personal vendetta which has no bearing over one's claim over the title or registrable interest in the said land. I can't see how the defendant's alleged caveatable interest is connected with the on goings as stated by him in his affidavit in reply. In any event as stated earlier the plaintiff's title over the said land is indefeasible by virtue of s 340(1) of the NLC, and the defendant has no business to interfere with the plaintiff's prerogative to deal with her land in the manner she considers best. On this ground alone I would allow the plaintiff's application to have the private caveat entered by the defendant removed. The reasons given does not confer the defendant with any claim over the title of the said land or any registrable interest therein. The defendant's position does not come within the ambit of the categories of person intended by s 323(1)(a) of the NLC.

[18] Additionally, it is apparent in Form 19B, that the defendant's caveat was intended to forbid the registration of any dealing affecting the whole land and was not confined to his 1/3 undivided share in the land. As regards to this issue, the Supreme Court in *Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1, has something to say (at p 5):

> Section 323(2) expressly requires firstly that Form 19B should be used, and secondly that the caveator must specify therein not only the nature of the claim on which his application is based, but also to state expressly whether the caveat is to bind the land or a particular interest only. In our view, non-compliance with these requirements may be fatal and may be a valid ground for removing a caveat at the instance of the applicant.

[19] It is clear that the defendant had violated the express provision s 323(2) which requires him to state therein whether the caveat is to bind the land itself or an undivided share in the land or a particular interest only. The failure to comply with the requirements of s 323(2) of the NLC is a valid ground for this court to make an order for the removal of the said caveat as dictated by the authority above. Further, *Mosbert Berhad (in liquidation) v*

Stella D'Cruz [1985] 2 MLJ 446 clearly stated that once a caveat is shown to be defective, it is not the duty of the court to save it by amendment. Even if he had complied with the requirements of s 323(2) of the NLC, the law again barred the defendant from hanging on with his caveat for being having 1/3 undivided share in the land, he is also the joint registered co-owners of the land. It is trite that a registered owner is not entitled to enter a private caveat in his own land. In *Eu Finance Bhd v Siland Sdn Bhd (M & J Frozen Food Sdn Bhd, intervener)* [1989] 1 MLJ 195, the court held as follows (at p 196):

> ... in my view, a person who relies on his status as registered owner must necessarily be a person already possessing title or interest in the land and not merely a person claiming title to or any interest in that land and must as a matter of logic have been excluded by the language of s 323(1).

[20] In addition, Nik Hashim J (as he then was) in the case of *Affin Bank Bhd v Dato' Mohamed bin Embong* [2002] 1 MLJ 475 expressly stated (at pp 482–483):

> However, it has been established by case law, which I respectfully agree, that a registered proprietor of land is not entitled to enter a private caveat in respect of his own land (see *Eu Finance Bhd v Siland Sdn Bhd (M & J Frozen Food Sdn Bhd, intervener)* [1989] 1 MLJ 195; *Asia Commercial Finance (M) Bhd & Anor v Development & Realtor Sdn Bhd* [1992] 2 MLJ 504), unless he is able to establish a set of circumstances over and above that of his status as a registered proprietor (*Sharifah Mastura bte Tuanku Ibrahim v Wan Aziz Ibrahim* [1993] 3 MLJ 231).

[21] On the evidence, the defendant without doubt failed miserably to establish that apart from being the registered owner of the said land, he had harboured other distinct interests in the said land recognised by the NLC, capable of being registered under the same.

[22] Finally, it is a trite law that the purpose of filing a caveat is to preserve the status quo over the said land pending resolution by the court of any dispute there in (see *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44). On account that the effect of the entry of a caveat is far reaching and rather stifling, it is implored upon the caveator to act fast without delay to file an action in a court of law to enforce his alleged legal right over the said land or to resolve any outstanding dispute therein within the context over which the caveat was entered. However in this case before me, more than a year had passed since the caveat was entered but the defendant's action in court to enforce his alleged right over the so call excesses by the plaintiff is yet to be filed or seen. Hence, the basis to justify the existence or preservation of the said caveat is just not out there anymore. Therefore, there is no longer any valid reason for the further existence or preservation of the said caveat.

[23] For the reasons given, I allowed the plaintiff's claims and ordered the removal of the caveat from the register henceforth with costs to be paid by the defendant to the plaintiff.

Plaintiff's application allowed.

Reported by Navit Kaur Randhawa